

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:09-CR-216-FL

UNITED STATES OF AMERICA)
)
 v.)
)
 DANIEL PATRICK BOYD, a/k/a)
 "Saifullah;")
 HYSEN SHERIFI;)
 ANES SUBASIC;)
 ZAKARIYA BOYD, a/k/a "Zak;")
 DYLAN BOYD, a/k/a "Mohammed;")
 JUDE KENAN MOHAMMAD;)
 MOHAMMAD OMAR ALY HASSAN;)
 and)
 ZIYAD YAGHI,)
)
 Defendants.)

ORDER

This matter is before the court of its own initiative, where the clerk reports to the undersigned receiving an e-mail from the Office of the United States Attorney today in regards to a journalist who contacted that office and requested copies of discs provided by it to media following detention hearing, which inquiry caused the clerk to pull exhibits from detention hearing held August 4-5, 2009. The clerk reports that she reviewed the exhibit list made at time of hearing and put the exhibits in order today to be certain that all are accounted for. To her surprise, extra exhibits were noticed today in the court's possession to which no reference is made on the exhibit list. Below is a listing of these, all of which are photographs:

<u>Exhibit No.</u>	<u>Description</u>
Ex. # 7	Photograph of vest and backpack with magazine
Ex. #35	Photograph of gun (automatic)

Ex. #36	Photograph of gun (automatic)
Ex. #37	Photograph of two guns (automatics)
Ex. #40	Photograph of ammunition cache
Ex. #41	Photograph of box of 5.7 x 28 mm cartridges

Counsel for the government is directed now to confer with defense counsel and tender a joint report concerning the status of these exhibits, including whether any were entered into the record at the detention hearing. If agreement appears, the record will be conformed to reflect the agreed upon disposition of these documents. If there is no agreement, the matter will be referred to the magistrate judge to determine whether the record of the detention hearing over which he presided properly includes any of these exhibits.

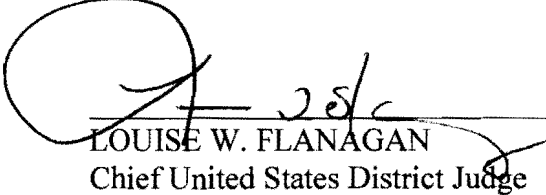
That e-mail to which reference is made above also prompted the clerk to note that the record includes eleven (11) copies of each of the original discs containing exhibits and audio compilations. The audio disc was introduced as Exhibit #49. The other disc contains photographs reported as introduced separately at detention hearing. A computer specialist residing in the clerk's office today reviewed the duplicate discs and confirms each is exactly the same.

Where the Office of the United States Attorney reports that it cannot satisfy the journalist's request as it has no copies of either disc and is uncertain at this time what information was on either, it now seeks to recover a copy or two of each of the discs. While in this instance, where so many copies have been made a part of the file, the request sounds as one the court can allow, the court is not inclined to give exhibits, even copies, to one side to dispose of in an ongoing proceeding without permitting the opposing side some opportunity to be heard as to the request.

In said joint report herein requested to be made, to aid the court in clarifying the status of photographs marked as government's exhibit nos. 7, 35 - 37, and 40 - 41, the position of defendant

concerning the government's request to recover and dispose of two discs from among the eleven (11) duplicates entered into the record of the original disc containing photographs and the eleven (11) duplicates entered into the record of the original disc containing audio also shall be presented, including whether defendant has any objection. If no objection appears, two of the eleven (11) duplicates of each shall be given over to the government to dispose of as it wishes. If objection appears, and the government therein states its desire to proceed on this request, the matter will be referred to the magistrate judge to determine whether any duplicates of either disc may be given over to the government.

SO ORDERED, this the 16th day of March, 2010.



LOUISE W. FLANAGAN
Chief United States District Judge